IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1278 OF 2005

Mr. Sunil Sitaram Hitale ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. S.N. Chimade for the appellant.

Mr. A.S. Shitole APP for the State.

CORAM: V.M.KANADE,J.
DATE: 17th March, 2005

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. Applicant is convicted by the Trial Court for the offence punishable under sections 366(A), 376 of the Indian Penal Code and sentenced to suffer R.I. for five years and eight years respectively.

3. Prosecution case is that the prosecutrix was kidnapped by the accused and was taken to a room in the school where he committed rape on her and, thereafter, he had taken her to the Jungle where he again raped her. The opinion given by the doctor after ossification test was performed was that the girl was between 15 to 17 years of age.

4. The learned Counsel appearing on behalf of the applicant has taken me through the evidence of the prosecutrix as also the medical evidence. From the medical evidence, it can be seen that there were no injuries on the person of the prosecutrix. The exact age of the prosecutrix is also not determined as the doctor has given an opinion that she is between 15 to 17 years of age. There is always a margin of error on either side in the case of such tests. Further, from the copy of the judgment, it can be seen that the accused Sunil was 17 years of age on the date on which the Judgement was pronounced. The incident in question had taken place on 30/12/2000. Therefore, obviously, the accused was less than 17 years of age on the date of the incident. It appears that this issue has not been raised in the Trial Court.

5. As, according to the Juvenile Justice Act, a minor cannot be tried by the Regular Court, I am of the view that prima facie case for grant of bail is made out. Applicant was on bail during trial. Applicant be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount.

6. Application is accordingly disposed of.

V.M. KANADE, J.